SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 736

REPUBLIC OF IRAQ, *Petitioner,*

v.

THE FIRST NATIONAL BANK OF CHICAGO, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

CARL L. SHIPLEY
1204 National Press Building
Washington, D. C. 20004
Attorney for Petitioner,
Republic of Iraq

Of Counsel:

SHIPLEY, AKERMAN & PICKETT
1204 National Press Building
Washington, D. C. 20004

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Carl L. Shipley, on behalf of the Republic of Iraq, prays that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Seventh Circuit.

OPINION BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit is No. 14663, dated August 12, 1965, and is set out *infra* in the appendix hereto, at page 1(a).

JURISDICTION

Jurisdiction of the Supreme Court of the United States is invoked pursuant to Title 28, U.S. Code, Section 2101 and Rules 19, 21, 22 and 23 of this Court.

QUESTIONS PRESENTED

1. Does a complaint filed by the Republic of Iraq, a sovereign nation with which the United States historically has maintained friendly relations, present a justiciable controversy under the Declaratory Judgment Act, and state a claim upon which relief can be granted, when said complaint requests a judgment declaring that (1) decrees of an Iraqi court of competent jurisdiction appointing an Iraqi paternal uncle, brother of an Iraqi decedent, guardian of the persons and estates of his surviving Iraqi children, must be given full faith and credit by the Cook County Illinois Probate Court under the principle of private international law known as "comity of nations", and (2) further declaring that assets of a decedent's estate held contrary to the provisions of said Iraqi judicial decrees are held contrary to law and must be delivered over to the guardian of said estates appointed by competent Iraqi judicial authority under the laws of that sovereign nation?

STATUTES INVOLVED

The Declaratory Judgment Act of 1934, 28 U.S.C. 2201, provides in pertinent part:

> "In a case of actual controversy within its jurisdiction * * * any Court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.

Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such."

The Iraq Nationality Law, Part 1, Article 8(a), Act of October 9, 1924, provides in pertinent part:

"The following persons shall be deemed to be Iraq nationals:

(a) Any person wherever born, whose father was at the time of that person's birth an Iraq national * * *"

The Illinois Probate Act, 1963, amended by Act approved May 25, 1955, provides in pertinent part:

§ 96. PERSONS ENTITLED TO PREFERENCE IN OBTAINING LETTERS.] The following persons are entitled to preference in the following order in obtaining the issuance of letters of administration of the various kinds:

(1) The surviving spouse or any person nominated by him.

(2) The children or any person nominated by them.

(3) The grandchildren of any person nominated by them.

(4) The father and mother or any person nominated by them.

(5) The brothers and sisters or any person nominated by them.

(6) The next of kin or any person nominated by them.

(7) The Public Administrator.

(8) A creditor of the estate.

In the event no executor is named in a will or in the event the executor named in a will is disqualified or fails to accept the trust for any reason, letters of administration with the will annexed shall be granted in accordance with the preferences as above set forth.

Only persons qualified to administer under this Act shall have the right to nominate, except that a person who was not qualified to act as administrator solely because of non-residence in this State has the right to nominate in accordance with the order of preference set forth in this Section if he is a resident of any state of the United States or of the District of Columbia. A person who has been removed as executor or administrator under this Act loses his right to name his successor.

(Amended by Act Approved June 13, 1963.)

§ 97. WHEN SEVERAL ARE EQUALLY ENTITLED.] When several persons are claiming and are equally entitled to administer or to nominate an administrator, the court may grant letters to one or more of them or to the nominee of one or more of them, preferring those of the whole blood or their nominee to those of the half blood or their nominee.

§ 98. PETITION FOR LETTERS.] A person desiring to have letters of administration issued on the estate of a deceased person shall file a verified petition therefor in the probate court of the proper county. The petition shall state if known: (1) the name and place of residence of the decedent at the time of his death; (2) the time and place of death; (3) the approximate value of the decedent's real and personal estate in this state; (4) the names and post office addresses of all heirs, devisees and legatees of the decedent and whether any of them is a minor; (5) the name and address of the person nominated as administrator; (6) the facts showing the right of the petitioner to act as or to nominate the administrator; (7)

when letters of administration de bonis non or of administration de bonis non with the will annexed are sought, the reason for the issuance of the letters; and (8) when original letters of administration are sought on the legal presumption of death, the facts and circumstances raising the presumption, the name and post office address of each person in possession or control of any property of the decedent and the last known post office address of the decedent. A petition for letters of administration with the will annexed may be joined with a petition to admit the will to probate. When the will creates or adds to a trust and the petition states the name and address of the trustee, the petition need not state the names and addresses of the beneficiaries of such trust who are not heirs of the testator, nor whether any of them is a minor. (Amended by Act approved May 25, 1955.)

§ 99. MAILING OF COPY OF PETITION TO PERSON HAVING PREFERRED RIGHT.] When a person is entitled either to administer or to nominate a person to administer in preference to the petitioner, the clerk of the probate court, not less than twenty days before the hearing on the petition, shall send a copy thereof to that person by mail if his name and post office address are stated in the petition. It is the duty of the clerk to endorse the time and place of the hearing on each copy of the petition mailed by him. A copy of the petition need not be sent to any person who personally appears before the probate court at the hearing thereon or who files his waiver of notice in writing.

§ 133. POWER TO APPOINT GUARDIAN.] On the filing of a verified petition by a reputable citizen of this state or on its own motion the probate court may appoint a guardian for a minor wherever it appears necessary or convenient. If the minor is a resident of this state, the guardian of his estate and person shall be appointed by the probate court

of the county in which he resides. If the minor is not a resident of this state, the guardian of his estate shall be appointed by the probate court of the county in which he owns real estate or, if he owns no real estate in this state, by the probate court of the county in which he owns personal estate.

§ 134. RESIDENCE OF GUARDIAN.] A non-resident of this state may be appointed as guardian of the person of a minor but not as guardian of his estate.

§ 135. NOMINATION BY COURT—MINOR UNDER FOURTEEN.] If the minor is under the age of fourteen years, the probate court may nominate the guardian of the person and the guardian of the estate of the minor.

§ 136. NOMINATION BY MINOR—OVER FOURTEEN.] If the minor is above the age of fourteen years and has no guardian, he may nominate the guardian of his person and estate who, if approved by the court, shall be appointed accordingly; if not approved by the court, or if the minor resides out of the state, or if, after being cited, the minor neglects to nominate a person who meets with the approval of the court, the court may nominate the guardian in the same manner as if the minor were under the age of fourteen years.

§ 137. CONTENTS OF PETITION.] All petitions for the appointment of a guardian shall state: (1) the name, date of birth and place of residence of the minor; (2) the approximate value of his personal estate; (3) the amount of his anticipated gross annual income and other receipts: (4) the name and post office address of the person having the custody of the person of the minor; (5) the name, post office address and, in case of an individual, the age and occupation of the proposed guardian. (Amended by Act approved April 19, 1961.)

Rule 14.10. Probate Court of Cook County, Illinois:

Rule No. 14.10—Appointment of Guardian

"In addition to the requirements of the Probate Act, a petition for the appointment of a guardian shall state the names and post office addresses, if known, of the minor, the person having his custoday, and his nearest relatives.

Notice of the time and place of the hearing shall be given to the minor, if he is over 14, to the person having his custody, and to his nearest relatives, in the following order:

(a) To each parent and to the minor's sponsors, if any; or

(b) If he has no living parent, to his nearest adult relative, and to the minor's sponsor, if any.

Five days' notice must be given to each person entitled to notice who is a resident of this State, and ten days' notice to each person entitled to notice, who is not a resident, except that the Judge may waive the giving of notice when notice is not deemed necessary for the protection of the minor or his estate."

PRELIMINARY STATEMENT

On September 12, 1961 Mr. and Mrs. Subhi Fakhri were killed in a common disaster in an Air France airplane crash at Rabat, Morocco. Mr. Fakhri was an Iraqi citizen travelling on an Iraqi passport. His wife was a British subject. Their visas were obtained in Canada. The deceased came to the United States temporarily as a student at the expense of the Iraq government.

He left 5 minor children, 2 of whom were born in England, and 3 in the United States. Under Iraqi law children of an Iraqi citizen are Iraqi nationals

from time of birth, regardless of where they were born.

On September 18, 1961 the Court of Personal Affairs of Baghdad appointed Col. Jehad A. Fakhri, the children's paternal uncle, as guardian of their persons and estates. (See page 1b, appendix hereto, Decree No. 609.)

On September 18, 1961, the Court of Personal Affairs of Baghdad issued a Certificate of Inheritance dividing the estate of Mr. Subhi Fakhri in 6 equal parts, 1 each to his mother and 5 children (see page 1c, appendix hereto, Decree No. 472). It is a court of competent jurisdiction. (See page 1d and e, appendix hereto.)

On September 19, 1961, the Probate Court of Cook County accepted a petition for appointment of guardians, and on the same day issued Letters of Guardianship to a maternal uncle, a U. S. citizen, and a maternal grandmother, a British citizen, of the children, and to the First National Bank of Chicago and the maternal uncle as guardians of the children's estates. Subsequently the maternal uncle resigned as co-guardian of the estates of the children, leaving only the First National Bank. No 10 day notice of the Probate Court proceedings was given to the Government of Iraq or next of kin, including the decedents mother, as required by the rules of said Court. On October 3, 1961, the Iraq Embassy in Washington advised said Court of its interest in the case, but said letter (page 1b, appendix hereto) was ignored.

On September 26, 1961 the Illinois Public Administrator filed petitions for Letters of Administration of the estates of the decedents, Subhi Fakhri and Suzy Fakhri, his wife. Said letters were issued to the Pub-

lic Administrator in the Subhi Fakhri estate on September 27, and in the Suzy Fakhri estate on September 26.

Petitioner instituted suit for declaratory judgment in the United States District Court, Northern District of Illinois, Eastern Division, and on defendants' motion to dismiss, the Court ruled:

> "I am deciding this on the basis that this Court is without jurisdiction to enter a decree for declaratory judgment which, in effect, would be a collateral attack on the Probate Court of Cook County. I think that the order entered by the Probate Court of Cook County was res judicata and it is not subject to collateral attack in this Court."

Thereafter, upon review, the United States Court of Appeals for the Seventh Circuit ruled:

> "We think the result reached by the district court was correct, but for reasons that the complaint present no justiciable controversy and fails to state a claim upon which relief can be granted".

Petitioner believes that as a matter of sound judicial discretion a review on writ of certiorari should be granted for the following special and important reasons within the scope of Rule 19 of this Court:

The Court of Appeals has decided a federal question in a way in conflict with applicable decisions of this court; and has decided an important question of federal law which has not been, but should be, settled by this court; and has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision, all as set out hereinafter.

ARGUMENT AMPLIFYING THE REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

I. Petitioner Has Standing

The Court of Appeals states at page 5 of its decision (page 5a, appendix) that the Republic of Iraq lacks standing to assert claims for itself and for its nationals. The Declaratory Judgment Act (28 U.S.C. 2201) confers standing in terms on any "interested party". As stated in *Philco Corporation* v. *FCC,* 257 F.2d 656, 658, cert. den. 358 U.S. 946:

> "* * * sufficient breadth must be given to 'party in interest' to permit those seriously affected to participate in the administrative and judicial proceedings * * *." See also *NBC* v. *FCC,* 319 U.S. 239.

It is generally held that a court is an "interested party", as the representative of the state as the guardian of the interest and welfare of its children. *Brown* v. *Brown,* 134 F.2d 505. Thus, a sovereign nation certainly is an "interested party" under the Act to assert the claims of its minor nationals, whether directly, as next friend, or *ex relatione.* In the instant case the complaint of the Republic of Iraq clearly states the suit is in behalf of Iraq itself, the 5 Iraqi children, and the widowed mother of the children's father, herself entitled to a 1/6 interest in her son's estate under Iraqi law. Certainly the Republic of Iraq has an interest in having its own judicial decrees affecting its nationals recognized by U. S. courts as a matter of comity.

II. Petitioner's Complaint Presents a Justiciable Controversy

The Court of Appeals at page 3a, appendix, conditions the federal right to a declaratory judgment on a "personal, immediate and substantial interest * * *

against a party against whom the requested relief can be granted." The Court of Appeals ignores the actual awarding of 28 U.S.C. 2201, which creates the declaratory judgment to:

> "* * * declare the rights and other legal relations of any interested party, whether or not further relief is or could be sought."

In *Willner* v. *Committee on Character,* 373 U.S. 96, this Court held that a claim of a present right to admission to the bar of a state presented a justiciable controversy. The Republic of Iraq claims a present right to have its judicial decrees recognized by the Probate Court of Cook County. Petitioner respectfully submits this presents a justiciable controversy. See also *Baker* v. *Carr,* 369 U.S. 186, where reference is made to laws of the United States and treaties made under the authority of the United States as a basis for justiciable controversy. As pointed out hereinafter, petitioner claims a right under the United Nations Charter to have its judicial decrees recognized under "principles of justice and international law." The Declaratory Judgment Act is remedial, and must be given a liberal construction. See *Tennessee Coal Co.* v. *Muscoda Local No. 123,* 137 F.2d 176, aff'd 321 U.S. 590. *Simmonds Accessories, Ltd.* v. *Elastic Stop Nut Corporation,* 257 F.2d 485; *Donnely* v. *Mavar Shrimp & Oyster Co.,* 190 F.2d 409. *Oil Workers International Union, Local No. 463* v. *Texoma Natural Gas. Co.,* 146 F.2d 62, cert. den. 324 U.S. 872, rehearing den. 325 U.S. 893, holding, "The Declaratory Judgment Act should be liberally construed, *Mississippi Power & Light Co.* v. *City of Jackson,* 116 F.2d 924, cert. den. 312 U.S. 698." If the judicial decrees of Iraq are entitled to full and faith and credit under

the international law principle of comity of nations, and the principles of international are recognized under the United Nations Charter to which both the U. S. and Iraq are signatories, then the First National Bank, respondent herein, is acting unlawfully in asserting rights as guardian of the estates of the Fakhri children, since the Iraqi judicial decrees of prior date designate Colonel Jehad Fakhri, paternal uncle, as guardian of the minors and their estates.

III. Probate Court of Cook County Had No Statutory Authority to Appoint Guardian

Paragraph 133 of the Probate Act of Illinois, limits the power of the Cook County Probate Court to appoint guardians to a situation where the "minor is a resident", or, if he is not a resident, where he owns real estate or personal estate. In the instant case the 5 children were infants, and as such would by law take the residence of their father. He was temporarily in Illinois as an Iraqi citizen on an Iraqi passport with a Canadian visa, with a British wife, a British mother-in-law and father-in-law, and was sent here by the Iraq Government as a student in Colorado. He was killed in Morocco in a French plane. All of his contacts were with and in Iraq. He had no permanent contacts with the United States or Cook County. "Resident" as it appears in the Illinois Probate Act must be construed to mean permanent domicile, not just temporary physical presence. The "contacts" test justifying State jurisdiction over a person or his property is discussed in *Texas* v. *New Jersey,* No. 13, orig. doc. Feb. 1, 1965, Sup. Ct. of U.S., *McGee* v. *International Life Insurance Co.,* 355 U.S. 220 and other cases cited therein. Under the "contracts" test, the minor children involved herein were

not residents within the meaning of the Illinois Probate Act to give the Cook County Probate Court jurisdiction to appoint a guardian and ignore the prior Iraq decrees appointing a different guardian.

IV. The Iraq Judgments Must Be Honored

In the tri-partite convention of January 9, 1930 between the United States, Great Britain, and Iraq concerning the rights of the United States of America and of its nationals in Iraq, it was declared (par. 9 of the preamble) that the United States recognized Iraq as an independent state. This convention came into force through the exchange of ratifications in London on February 24, 1931, and its proclamation by the President on March 11, 1931, and incorporated by reference the covenant of the League of Nations. 47 Stat. 1817, 1819.

Iraq is a member of the United Nations, and has joined with the United States in signing the U. N. Charter on June 26, 1945, which binds all parties to rely upon the "principles of justice and international law," for the settlement of international "disputes or situations." 59 Stat. 1033, 1037, 1203.

In addition to the original treaty of recognition, treaties in force between the United States and Iraq today include a treaty on customs (5 UST 657); defense (6 UST 6014; 8 UST 873; 10 UST 1415); economic and technical cooperation (3 UST 541, 4748); education (2 UST 1908); extradition (49 Stat. 3380); lend-lease (59 Stat. 1535); passport visas (7 UST 1067); publications (58 Stat. 1253); and trade and commerce (54 Stat. 1790), all of which are instinct with the principle of international comity. Treaties

in Force, Jan. 1, 1964, Dept. of State Publication 7645.

In an official ruling U. S. Attorney General Cummings wrote Secretary of State Hull on November 30, 1936:

> "The extent to which foreign judgments are given faith and credit in the United States is determined by decisions of the courts, which apply the principle of the comity of nations. There are no statutes governing the matter in this country. Courts in the United States allow judgments rendered in a foreign country the same effect as the courts of that country allow judgments rendered in the United States."
>
> Attorney General Cummings to Secretary Hull, November 30, 1936 MS. Department of State, file 844 D. 04600/2.

In his official opinion cited above, the Attorney General cited *U. S.* v. *Guyot,* 159 U.S. 113, 202-203, as a summary of the applicable rule:

> "* * * where there has been opportunity for a full and fair trial abroad before a court of competent jurisdiction * * * and there is nothing to show either prejudice in the court, or in the system of laws under which it was sitting, or fraud in procuring the judgment, or any other reason why the comity of this nation should not allow it full effect, the merits of the case should not, in an action brought in this country upon the judgment, be tried afresh * * * the defendants * * * cannot be permitted * * * to contend the validity or the effect of the judgment sued on." *U. S.* v. *Guyot,* 159 U.S. 113, 202-3; Digest of International Law, Hackworth, U. S. Gov. Prtg. Off., Wash., 1941, p. 89, et seq.

Under the Iraq Nationality Law, all persons born of an Iraqi father are Iraqi citizens and nationals:

> "Art. 8.—The following persons shall be deemed to be Iraq nationals:
>
> (a) Any person wherever born, whose father was at the time of that person's birth an Iraq national * * *"
>
> Iraq Nationality Law, Part I, Art. 8, Act of October 9, 1924, Ministry of Justice, Baghdad, Iraq.

Under the Decrees No. 609 and No. 472, (pages 1c, 2c, 1d, 2d, appendix) the Court of Personal Affairs of Baghdad decreed that Colonel Jehad Fakhri, paternal uncle of the 5 Fakhri children, was the guardian of their persons and estates, and divided the estate of the deceased Subhi Fakhri in 6 equal shares, 1 to his surviving mother, Nouriah, and 1 share to each of his 5 children, Amal, Ahmad, Samiramis, Omar and Azza, in accordance with Iraqi law.

Under Iraq law the deceased's mother is entitled to share with his surviving children in his estate. The decedent, his mother, and all of his children were Iraqi nationals, and he was travelling on an Iraq passport, as set out hereinabove. See pages 1c, 2c, 2b, 1e, appendix.

> Iraqi Personal Status Law No. 188 of 1959 (copy attached). Outlines of Mohammedan Law, 2d ed., Asof A.A. Fyzee, 1955, Oxford Univ. Press, p. 336, 342, 346 (U.S. Library of Congress).

The rule of law in Illinois is that a foreign judgment is given the same force and effect as that of a sister state.

> "* * * By rule of comity, the same force and effect is given to judgments of foreign countries

as is given to sister states." *Truscon Steel Co. of Canada* v. *Biegler,* 28 N.E. 2d 623, 306 Ill. 180.

The court of appeals refused to follow this Illinois rule of law.

The decree of a court of a foreign country having jurisdiction of a decedent's estate cannot be questioned as to its validity, in the absence of a showing of irregularity. *Royal Baking Powder Co.* v. *Hessey,* 76 F.2d 645. There was no showing of irregularity of the two Iraqi decrees herein involved.

The fact that the decedent and his children were all Iraqi citizens, having their rights subject to determination by Iraqi law, should control the decedent's estate, and compel recognition of the Iraqi judgments. No question is raised as to the paramount Iraq nationality of the children. Their U. S. and/or British citizenship is a pure accident of geography, resulting from their deceased father's business travel, and neither the rights of the decedent's mother or the right of guardianship of the paternal uncle should be defeated by the temporary presence of the children in Illinois at the time their Iraq parents died in Morocco —far from the United States. The Probate Court of Cook County ignored the following rule of law, and the court of appeals side-stepped it:

> "It would appear that considerations of comity and reciprocity would * * * preclude American courts from entertaining a collateral attack upon a decree * * * entered by a foreign court." *McKay v. Alexander,* 268 F.2d 35.

The judgments of foreign courts are prima facie valid in U. S. courts. A United States federal court can judicially notice foreign court procedures. The

court of appeals should have noticed the Iraq decrees. *N. Y. Life Ins. Co.* v. *Panagiotopoulas,* 83 F.2d 957, 900. *In re Alstiebalaget Kruger & Toll,* 20 F. Supp. 904. *Spann* v. *Compania Mexicani,* 131 F.2d 609.

A right in personam involving a decedent's estate is enforceable in a federal court despite a state law making it enforceable in a state court:

> "* * * the federal courts may entertain actions, within their diversity and historic-equity jurisdiction, involving claims to decedents' estates; notwithstanding the fact that the laws of the state * * * limit the right to establish such demands to a proceeding in the probate courts of the state (cases cited)." *Jackson* v. *U. S. National Bank,* 153 F. Supp. 104.

A federal court may set aside a state court judgment for equitable reasons or grounds recognized by the state. *O'Boyle* v. *Bevil,* 259 F.2d 506, cert. den. 359 U.S. 913. The court of appeals ignored these rules of law in petitioner's case herein.

V. The Government of Iraq Received No Notice

Under the law of Illinois, letters of administration could only issue upon filing of a verified petition containing names of all next of kin (3 Ill. Rev. Stat. 1961, par. 98), and a copy of the petition should have been sent to the Government of Iraq through its Embassy in Washington, D. C., and an effort made to notify the decedent's mother in Iraq. No such effort was made with respect to letters of administration, or guardianship of the persons or estates of the minors involved. Ch. 3. Ill. Rev. Stat. 1961, Par. 98, 131, et seq., and 401.1, 401.2, and Rule 14.10, Probate Court of Cook County (10 day notice).

CONCLUSION

The petitioner herein, the Republic of Iraq, respectfully submits that the two decrees dated September 18, 1961, issued prior to the actions of the Probate Court of Cook County, are entitled to full faith and credit under the principles of international comity. Moreover, the failure of the Probate Court of Cook County to assure itself that next of kin and interested parties, including decedent's mother in Iraq and the Government of Iraq, had received notice of the court's orders of September 19, 1961, invalidates said orders. Apparently the Probate Court issued letters of guardianship of the persons and estates the day the petition was filed, without notice. Further, the petition for letters of administration appears to have been filed September 26, 1961, and the letters of administration issued on September 26 and 27, 1961, without notice. Petitioner verily believes its important interests are entitled to consideration, since the entire proceedings involves Iraqi citizens and children, and property of an Iraqi national, all only in Illinois by chance on the date of Subhi Fakhri's death. Even his death was outside Illinois thus, not a matter giving rise to any right of the First National Bank to intrude itself into an Iraq matter, and seek to become guardian of the estate of Iraq children. All significant contacts were with Iraq, not Illinois.

WHEREFORE, the premises considered, petitioners respectfully submit that they have set forth hereinabove special and important reasons for the exercise of sound judicial discretion by this Court in reviewing the opinion and decision of the U. S. Court of Appeals for the Seventh Circuit on writ of certiorari.

For the foregoing reasons, it is respectfuly submitted that this petition for a writ of certiorari should be granted. There is no avenue of relief from the erroneous decision of the Court of Appeals violating rights of petitioner herein except this Court.

CARL L. SHIPLEY
Attorney for Republic of Iraq
1204 National Press Building
Washington, D. C. 20004

Of Counsel:

SHIPLEY, AKERMAN & PICKETT
1204 National Press Building
Washington, D. C. 20004

APPENDIX

No. 14663 SEPTEMBER TERM, 1964 APRIL SESSION, 1965

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division.

REPUBLIC OF IRAQ, *Plaintiff-Appellant*,

v.

THE FIRST NATIONAL BANK OF CHICAGO, *Defendant-Appellee*.

August 12, 1965

Before HASTINGS, *Chief Judge*, KNOCH and KILEY, *Circuit Judges*.

KILEY, *Circuit Judge*. By this suit the Republic of Iraq seeks a judicial declaration that decrees of the Court of Personal Affairs of Baghdad, Iraq, appointing a guardian of the persons and estates of certain minor children residing in Chicago, Illinois, and dividing the estate of the deceased father among the children and their paternal grandmother are entitled, under the principles of comity, to recognition by the Probate Court of Cook County, Illinois; and for a declaration that the assets of the children's estates are unlawfully held by the First National Bank of Chicago, guardian of the estates by appointment of the Probate Court and sole defendant here, and that the assets must be turned over to the Iraqi guardian. The district court sustained the Bank's motion to dismiss the complaint and the Republic of Iraq has appealed. We affirm.

The complaint alleges that plaintiff brings the action as a sovereign nation in behalf of itself, its Ministries of Defense and Education, the five minor children, and their paternal grandmother. Jurisdiction is alleged on the basis of diversity of citizenship under 28 U.S.C. §1332 and the Declaratory Judgment Act, 28 U.S.C. §2201. The amount of the children's estates is not alleged, but in argument to the district court the parties agreed that it is at least $400,000. The amount of the alleged claim of the Defense and Education Ministries is stated in terms of Iraqi currency, but plaintiff's counsel told the district court that it is approximately $15,000.

On September 12, 1961 Subhi Ahmad Fakhri, an Iraqi citizen and national, and his wife, a British citizen, were killed in an airplane crash near Rabat, Morocco. They left, residing in Chicago where the parents had been living since 1957 or 1958, five minor children, two of whom were born in England and three in the United States. On September 18, 1961 the Court of Personal Affairs in Baghdad appointed Colonel Jehad Ahmed Fakhri, paternal uncle of the children, guardian of their persons and estates, and the estate of Subhi Fakhri was divided into six equal shares, one each for the five children and their paternal grandmother. On September 19, 1961 the Probate Court of Cook County appointed Donn P. Hogan, maternal uncle of the children, and defendant Bank, as guardians of the estates of the children, and Suzanne M. E. Hogan, the maternal grandmother, as personal guardian. Subsequently Mr. Hogan resigned as co-guardian of the estates and was appointed co-guardian of the persons. On October 3, 1961 the Iraqi Charge d'Affaires in Washington wrote to the Judge of the Cook County Probate Court notifying him of the Iraqi decrees, but that court has proceeded without regard to the decrees.

Plaintiff also alleged that the children, under the Iraqi nationality laws, are Iraqi citizens; that Subhi Fakhri

was indebted to the Iraqi Ministries of Defense and Education for funds expended for his education; and that no notice of the Probate Court proceedings was given to Colonel Fakhri.

The district court dismissed the complaint on the ground of want of federal jurisdiction to entertain a collateral attack on the orders of the Probate Court, which the court stated were *"res judicata"*. We think the result reached by the district court was correct, but for the reasons that the complaint presents no justiciable controversy and fails to state a claim upon which relief can be granted.

In the complaint plaintiff alleges no specific basis of federal question jurisdiction, but it argued to the district court and here that a federal question is presented because of a number of treaties between the United States and the Republic of Iraq and because both nations are signatories of the United Nations Charter. Plaintiff points to no specific treaty provision, nor to any in the United Nations Charter, which would require a state court to recognize an Iraqi guardianship decree. See *Hauenstein* v. *Lynham*, 100 U.S. 483 (1879). The mere fact that plaintiff is a friendly sovereign nation with treaty relationships with the United States does not make the claim one arising under the treaties of the United States for the purpose of 28 U.S.C. §1331. The sole basis of the district court's jurisdiction, therefore, was diversity of citizenship between the Republic of Iraq and the Bank, an Illinois corporation, and substantive questions presented must be governed by Illinois law. *Erie R. Co.* v. *Tompkins*, 304 U.S. 64 (1938).

The judicial power of the United States extends only to "cases and controversies". U.S. CONST., Art. III, Sec. 2. Federal courts are empowered to adjudicate claims only at the instance of one who can assert a personal, immediate and substantial interest in the matter presented to the court; and the claim must be against a party against whom

the requested relief can be granted. *Aetna Life Ins. Co.* v. *Haworth*, 300 U.S. 216, 240-41 (1937); *Lebowich* v. *O'Connor*, 309 F.2d 111, 114 (1962).

Plaintiff's first prayer for relief is for a declaratory judgment that the decrees of the Court of Personal Affairs of Baghdad are entitled to comity and must be given full faith and credit by the Cook County Probate Court. The district court has no probate jurisdiction, *Markham* v. *Allen*, 326 U.S. 490, 494 (1945); *Sutton* v. *English*, 246 U.S. 199, 205 (1918), and no power to order the Probate Court of Cook County, even if that court or a judge thereof were a party to this suit, to recognize and give effect to a foreign decree, the effect of which would be to remove control of the entire matter from the jurisdiction of the Probate Court. The authority of the district court under its diversity jurisdiction is limited to rendering judgments *in personam* against executors, administrators, guardians and other representatives. *Commonwealth Trust Co. of Pittsburgh* v. *Bradford*, 297 U.S. 613, 618 (1936). It may not render any judgment which would interfere with the possession and control of property under administration by the Probate Court. *Princess Lida of Thurn and Taxis* v. *Thompson*, 305 U.S. 456, 466-68 (1939); *United States* v. *Bank of New York & Trust Co.*, 296 U.S. 459, 477-79 (1936); *Waterman* v. *Canal-Louisiana Bank and Trust Co.*, 215 U.S. 33, 43-46 (1909); *Byers* v. *McAuley*, 149 U.S. 608, 615-19 (1893); *Galleher* v. *Grant*, 160 F. Supp. 88 (N.D. Ill. 1958).

In its own behalf the Republic of Iraq alleges that Subhi Fakhri was indebted to it for amounts expended by it for his education. No prayer for relief is made with respect to this claim, and none could properly be made against the Bank, the sole defendant here, as guardian of the estates of the children. In the complaint plaintiff "asserts its right as a sovereign nation to recover from the estate of the deceased Iraqi citizen these sums of money in accord-

ance with applicable Iraqi law." Such a claim should be brought against the representative of the estate of the alleged debtor, not the guardian of the estates of the children. If the time for filing such claims against the representative of the estate has elapsed, the federal court is bound by the state law. *Sutton* v. *English*, 246 U.S. 199, 205-207 (1918); *Security Trust Co.* v. *Black River Nat'l Bk.*, 187 U.S. 211, 227 (1902).

The complaint also asserts that it is brought in behalf of the mother of Subhi Fakhri to obtain the one-sixth share of his estate awarded to her by the Iraqi decree. This claim too is not properly brought against the Bank as guardian of the children's estates.

Plaintiff's principal claim is brought in behalf of the children to assert the claim of each to one-sixth of the father's estate pursuant to one of the Iraqi decrees and to have Colonel Fakhri recognized as guardian of their persons and estates. As to the claims for shares of that estate and the appointment of the personal guardian, again the claims are not properly brought against the Bank.

A further fundamental objection to the plaintiff's assertion of the claims of the mother and the children is its lack of standing to assert these claims. Federal courts will not entertain a suit at the instance of the United States if the suit is in reality one between private individuals. *United States* v. *San Jacinto Tin Co.*, 125 U.S. 273, 286 (1888); *accord United States* v. *Minnesota*, 270 U.S. 181, 193 (1926); *In re Debs*, 1258 U.S. 564, 586 (1895); *United States* v. *American Bell Telephone Co.*, 128 U.S. 315, 367 (1888). We think the same rule applies in the case of a foreign nation. If a sovereign nation chooses to assert against a foreign nation private claims of its individual citizens it does so as sovereign *vis-a-vis* the foreign nation, not as a private litigant. *United States* v. *Dickelman*, 92 U.S. 520, 524 (1875). Cases dealing with the assertion

by States of rights of their citizens under the original jurisdiction of the United States, *e.g. New Hampshire* v. *Louisiana: New York* v. *Louisiana,* 108 U.S. 76, 90-91 (1883); *Oklahoma* v. *Cook,* 304 U.S. 387 (1938); *Missouri* v. *Illinois and the Sanitary District of Chicago,* 180 U.S. 208 (1901), illustrate the type of interest which a government must show in order to be entitled to maintain an action in its own name—an interest which the Republic of Iraq does not possess in this case.

In all the decisions to which we have just referred it is either expressed or implied that this interest or duty of the United States must exist as the foundation of the right of action. Of course this interest must be made to appear in the progress of the proceedings, either by pleading or evidence, and if there is a want of it, and the fact is manifest that the suit has actually been brought for the benefit of some third person, and that no obligation to the general public exists which requires the United States to bring it, then the suit must fail.

The complaint in alleging that the Probate Court of Cook County must recognize a guardianship decree of an Iraqi court concerning children residing in Cook County also fails to state a claim upon which relief can be granted under Illinois law. Regardless of the domicile or nationality of the child, the courts of Illinois have jurisdiction over the guardianship of a child within the state and are not required under the principles of comity or full faith and credit to recognize guardianship decrees of a foreign state with respect to such a child. *People* v. *Wingate,* 376 Ill. 244, 33 N.E. 2d 467 (1941); *Winslow* v. *Lewis,* 15 Ill. App. 2d 65, 144 N.E. 2d 782 (1957).

While a foreign guardianship decree may be evidence to be considered on the question whether it will be recognized as a matter of comity, we think that in this case, where the children have never been in Iraq and were residing in Chicago with their parents since 1957 or 1958, it is clear that the courts of Illinois would not recognize the

Iraqi decrees, and that these principles apply with equal, if not greater, force to the question of the guardianship of estates located in Illinois.

The judgment of the district court dismissing the complaint is affirmed.

A true Copy:
Teste:

.....
Clerk of the United States Court of Appeals for the Seventh Circuit.

REPUBLIC OF IRAQ
CITY OF BAGHDAD

EMBASSY OF THE UNITED STATES OF AMERICA, ss:

I, Willard B. Devlin, Consul of the United States of America at Baghdad, Iraq, duly commissioned and qualified, do hereby certify that Khalil Ibrahim Hamdi, whose true signature and official seal of the Ministry of Foreign Affairs are, respectively, subscribed and affixed to the annexed document, was on the twenty-fifth day of June, 1964, the date thereof, the official authorized to authenticate official certificates and documents, to whose official acts faith and credit are due.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of the Consular Service of the United States of America, Baghdad, Iraq, this twenty-seventh day of June, 1964.

WILLARD B. DEVLIN
Counsel of the United States of America

THE REPUBLIC OF IRAQ

Ministry of Justice
Correspondence Section

No. G/39/754.

Date: 16-6-1964.

IN THE NAME OF GOD, THE MERCIFUL, THE COMPASSIONATE

To Whom It May Concern

Subject—Certificate

On the request of Brigadier General Engineer Mr. JEHAD AHMAD FAKHRI, the Ministry of Justice of the Iraq Republic confirm the following information:

1. That the Qadhis in the Iraq Courts are official judges as any other judge in the Iraq Republic, and they preside over courts that have authority and jurisdiction over the personal status affairs of the individuals residing or come under the jurisdiction of these courts. The judgments and decisions of these courts in such affairs are passed according to the laws of personal status and the laws of judicial procedures which are in force in Iraq.

2. That the authority and jurisdiction of these courts, according to the law, include dealing and passing judicial judgements and decisions regarding the affairs of the persons deceased and their estates, and determining the heirs who should have their shares and the amount of shares in the estates. Furthermore, the aforesaid courts are also authorised to nominate the guardians over those heirs who are still minors. All such authority and jurisdiction are being practised by passing judicial decisions and judgements under the Law and are to be enforced.

3. That the two decisions passed by the Qadhi of Baghdad, (viz. the Judge of the judicial court which is legally

authorised with the affairs of the persons deceased and their estates as aforesaid), i.e.: the first: dated 18th, September 1961, No. 472, regarding the determination of the heirs who should have shares in the estate of late Subhi Ahmad Fakhri; the other: dated 18th, September 1961, No. 609, regarding the nomination of Mr. Jehad Ahmad Fakhri as a guardian over his brothers' minor children heirs, Amal, Ahmad Fakhri, Samiramis, Omar and Azza, that these two decisions were duely and legally passed according to the Laws in force in Iraq within the legal authority and jurisdiction of the said court.

Signed/Salem Al Mudallal
For/Minister of Justice

I, Mohammad Hamid El-Kindi, First Notary Public of Baghdad South, Iraq, certify that this is the translation of the attached document, translated from Arabic into English by Mr. Abdul Jabbar Al Jaddou, which translation, in my belief, is correct, and after taking the oath of the translator for the correctness of the translation, a copy of same has been kept and certified in this office.

First Notary
Public, Baghdad, Iraq

REPUBLIC OF IRAQ
CITY OF BAGHDAD

EMBASSY OF THE UNITED STATES OF AMERICA, ss:

I, Arthur M. Niner, Jr., Vice Consul of the United States of America at Baghdad, Iraq, duly commissioned and qualified, do hereby certify that Tawfiq Abdul-Jabbar, whose true signature and official seal of the Ministry of Foreign Affairs are, respectively, subscribed and affixed to the annexed certificate (document), was on the second day of September, 1963, the date thereof, the official authorized to authenticate official certificates and documents, to whose official acts faith and credit are due.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of the Consular Service of the United States of America, Baghdad, Iraq, this third day of September, 1963.

ARTHUR M. NINER, JR.
Vice Consul of the United States of America

Subhi Ahmad Fakhri from the Quarter of Bab Al Sheikh, second section of Baghdad, died on 13th September 1961, his only heirs are his mother: Nouriah daugher of Allah Werdy and his minor children Amal, Ahmad Fakhri, Samiramis, Omar and Azza and that there are no other heirs as it was known from the declaration which came from the said quarter on 18th September 1961 and the information given to this Court by Abdul Kader sone of Ibrahim Al-Zahawi, from the quarter of Jadid Hassan Pasha and Haji son of Ahmad Fakhri son of Khalaf, from the Quarter of Azzat Tiwalat in the presence and request of Jihad son of Ahmad Fakhri, guardian for the said minors as per Court decree dated 18th September 1961, No. 609, and in pursuance of Iraqi Porsonal Station Law No. 188 of 1959, which was published in the Official Gazette, No. 280, dated 30th December 1959, the estate is to be divided into six shares, one to each of the heirs, namely Nouriah, Amal, Ahmad Fakhri, Samiramis, Omar and Azza, equally in pursuance of the said Law and subsequent to the request and confirmation made by the Guardian Jihad, this certificate of inheritance was issued on the 8th of Rabi Al Thani, corresponding to 18th September, 1961.

The Qadhi (Raligious Judge)
of Baghdad
Abdul Hamid Al Atrushi

I, the undersigned, Abdul Jabbar Jaddou, confirm that the above is a true translation from Arabic into English of the attached certificate of inheritance No. 472 dated 18th September 1961, regarding the shares of inheritance of the heirs of the late Subhi Ahmed Fakhri, Baghdad, the 20th September, 1961.

ABDUL JABBAR JADDOU

I, the undersigned, Naji Nassir, First Notary Public of Baghdad South, Iraq, certify the translation of the attached certificate of inheritance, which was made by Abdul Jabbar Jaddou from Arabic into English and confirm it is correct. Baghdad 20th September, 1961.

REPUBLIC OF IRAQ
CITY OF BAGHDAD

EMBASSY OF THE UNITED STATES OF AMERICA, ss:

I, Arthur M. Niner, Jr., Vice Consul of the United States of America at Baghdad, Iraq, duly commissioned and qualified, do hereby certify that Tawfiq Abdul-Jabbar, whose true signature and official seal of the Ministry of Foreign Affairs are, respectively, subscribed and affixed to the annexed certificate (document), was on the second day of September, 1963, the date hereof, the official authorized to authenticate official certificates and documents, to whose official acts faith and credit are due.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of the Consular Service of the United States of America, Baghdad, Iraq, this third day of September, 1963.

ARTHUR M. NINER, JR.
Vice Consul of the United States of America

We learned from the declaration received from the Mukhtar and elders of Karradah Sharqiyah quarter, dated 17th September 1961, that Mr. Subhi Ahmad Fakhri and his wife Suki were killed in a plane accident leaving their minor children Amal, Ahmed Fakhri, Samiramis, Omar and Azza without guardian or trustee who manages their affairs, and preserve their properties (belongings) and whereas Mr. Jihad Ahmad Fakhri is alive and he is the uncle of the said minors, of good character and reputation and is suitable to be guardian for his brother's minor children and as he attended and accepted the guardians consequently it was agreed by this Court to appoint Mr. Jihad Ahmad Fakhri guardian for the minor children of his brother, namely Amal, Ahmad Fakhri, Samiramis, Omar and Azza until they attain majority and he was directed to fear Almighty God and provided that he does not sell or mortgage their properties without a Court's permission, and at the request, it was registered on 18th September, 1961.

The Qadhi (Religious Judge)
of Baghdad
Abdul Hamid Al Atrushi

I, the undersigned, Abdul Jabbar Jaddou, confirm that the above is a true translation from Arabic into English of the attached decree, No. 609 dated 18th September 1961, appointing Mr. Jihad Ahmad Fakhri guardian for his brother's minor children.

Baghdad, 20th September, 1961.
Abdul Jabbar Jaddou

I, the undersigned, Naji Nassir, First Notary Public of Baghdad South, Iraq, certify the translation of the attached decree of guardianship, which was made by Abdul Jabbar Jaddou from Arabic into English and confirm it is correct.

Baghdad, 20th September, 1961.

EMBASSY OF
THE REPUBLIC OF IRAQ
1801 P Street, N.W.
Washington, D. C. 20036

January 15, 1964

To Whom It May Concern:

The Kadhi Court of Baghdad (Court of Personal Affairs of Baghdad) is the official judicial body under the laws of the Republic of Iraq empowered and authorized to make determinations and enter final judgement respecting the persons and the estates of Iraqi nationals and their property in Baghdad and elsewhere in the world.

It is a court of competent jurisdiction and under Iraqi law had jurisdiction of the persons and property involved in the decrees of September 18, 1961 involving the Fakhri children and estate.

All procedures respecting notice and opportunity to participate applicable under Iraqi law were followed by the court.

ALI HAIDER SULAIMAN,
Ambassador

CS:lm

October 3, 1961

Q/3/20
The Honorable
Robert J. Dunne
Judge of the Probate Court
Cook County
Chicago, Illinois

Dear Sir:

I take the liberty of sending you this letter with reference to the question of the estate and the guardianship of the children of the late Subhi A. Fakhri of 1228 Fairwell Avenue, Chicago 26, Illinois.

We understand that the case has been taken before your court and that Mr. Fakhri's mother-in-law, Mrs. Susan Hogan, has been appointed provisionally as a guardian of the children, and Mr. Donn Hogan, jointly with the First National Bank, as guardian of the estate.

This Embassy has no intention of interferring in a judgment passed by your court according to the laws and information which was available at the moment of examining this question, but I would like to supply you with the full information and background of the case and also to inform you that the family of the late Mr. Fakhri will pursue the case further to secure their rights since the decisions and measures taken were only provisional.

The late Mr. Fakhri was an Iraqi citizen and bearer of an Iraqi passport. His wife and mother of his five children, Suzy Allen Patricia Hogan, was a British subject. The first two of his children, Amal, 12 years old, a girl, and Ahmed, 9, a boy, were both born in England. Semiramis, 5, a girl, Omar, 3, a boy, and Aza, 8 months, a girl, were born in the United States.

Mr. Fakhri came to this country on an Iraqi government scholarship. Later he went into business and he had business connections in various countries in North Africa

and the Middle East besides his business in Iraq and the United States.

Mr. and Mrs. Fakhri lost their lives on September 12, 1961, on an Air France plane which crashed near Rabat, Morocco on that day, leaving behind their five children with Mrs. Fakhri's mother who happened to be in the United States for a short visit. She is Mrs. Susan Hogan and lives with her husband in Leicester, England. Mr. Fakhri's children, having been left alone after their parents' death, were placed under her guardianship provisionally, according to Your Honor's decision.

According to Iraqi nationality laws, the children of an Iraqi citizen are from birth Iraqi citizens irrespective of the place of their birth. Accordingly, the Court of Personal Affairs in Baghdad, Iraq, has appointed the children's uncle, Colonel Jihad A. Fakhri, being the closest member of the family, as a guardian of the children. The original copy of this appointment, together with an English translation, both legalized by the Embassy of the United States in Baghdad, Iraq, has been produced at the Embassy by Colonel Fakhri, who flew to the United States from Iraq upon the death of his brother.

Col. Fakhri also produced the decision of the same court as far as the estate of the late Mr. Fakhri is concerned and the distribution of the heritage according to the Iraqi personal affairs laws, both the original and translation being legalized by the American Embassy in Baghdad, Iraq.

Since it is only natural that these Iraqi children are desired to be brought up as Iraqis under the traditions and conditions of their fathers, Col. Fakhri will appeal through the regular procedure for a decision from the courts to shift the provisional guardianship from the late Mr. Fakhri's mother-in-law, who is a British subject, to himself and to take the children to Iraq.

This Embassy will naturally supply all the necessary information as far as Iraqi laws, regulations and practices are concerned whenever and if required. Meanwhile, I hasten to supply you with this preliminary information so that no final decision is taken about the guardianship of these children and the estate of the late Mr. Fakhri, particularly since Mr. Fakhri's mother, herself a widow, is still alive and according to our laws, she has a share in the heritage and her rights have to be preserved as well.

Sincerely yours,

/s/ N. Safwat
Najdat Fathi Safwat
Charge d'Affairs a.i.